

1 informed by the office of the County Counsel for Del Norte County that the County Counsel had
 2 received authorization to represent defendant Wilson in this matter on August 14, 2012. County
 3 Counsel's office, therefore, requested an extension of time to file an answer. Plaintiffs stipulated
 4 to an extension of time and the Court entered an order granting the extension. The defendant then
 5 filed a motion to dismiss on September 19, 2012. Following the filing of the motion to dismiss the
 6 parties entered into substantive settlement negotiations that resulted in the parties filing a
 7 stipulation with the Court on October 10, 2012, staying proceedings in the case for 60 days to allow
 8 the parties to continue to pursue settlement of the case. On December 28, 2012, in advance of a
 9 case management conference scheduled for January 3, 2013, parties filed a joint case management
 10 statement requesting the Court to reschedule the case management conference to allow parties an
 11 additional 60 days for continued settlement negotiation. Since the Court ordered that the case
 12 management conference be reset to March 7, 2013 at 9:00 a.m., counsel for both parties have
 13 submitted for client approval a settlement in the form of a written stipulation for entry of judgment.
 14 Defendant has requested modifications to the proposed stipulation for entry of judgment. Counsel
 15 for parties are now in the process of redrafting the stipulation incorporate the requested changes.
 16 Parties anticipate that they will need an additional 60 days to review and approve of the final
 17 content and form of the stipulation and request that the Court set a new date for the case
 18 management conference 60 days from today's date.

19 1. **Jurisdiction and Service:** The Court has jurisdiction over Plaintiffs' claims based
 20 upon 28 U.S.C. § 1331, in that the Plaintiffs' claims arise under the Constitution and laws of the
 21 United States; and (b) 28 U.S.C. § 1362, in that this civil action is brought by a federally
 22 recognized Indian tribe whose claims arise under the Constitution and the laws of the United States.
 23 There are no issues with regard to venue and, no defendants remain to be served, pending the filing
 24 of a second amended complaint.

25 2. **Facts:** Plaintiffs Gary Dowd and Frank Dowd ("Individual Plaintiffs"), members
 26 of the plaintiff Resighini Rancheria ("Tribe"), were cited for California Fish and Game Code
 27 violations, specifically, fishing on the Klamath River without a Yurok Tribal ID. Plaintiffs allege
 28 both citations were issued by law enforcement officers deputized by the Sheriff to exercise state

1 peace officer powers and to enforce California law. In each instance, the Individual Plaintiffs were
2 fishing within the boundaries of the old Klamath River Reservation/Extension. The Del Norte
3 County District Attorney later dismissed all charges against both Individual Plaintiffs. Plaintiffs
4 maintain that the Individual Plaintiffs were fishing pursuant to the federally reserved fishing rights
5 of the Resighini Rancheria, and the arrests constitute an interference with those rights. Plaintiffs
6 contend that the law enforcement officers carrying out the arrests were exercising peace officer
7 powers pursuant to deputation by defendant Wilson. Plaintiffs bring this action to prevent Wilson
8 and anyone acting pursuant to his authority from arresting Resighini Tribal members for exercising
9 their federally reserved fishing rights.

10 3. **Legal Issues:** The main legal issues in this case are as follows. (1) Whether the
11 Sheriff and the Department of Fish and Game have jurisdiction to enforce the civil regulatory
12 provisions of the State's Fish and Game Code against the members of the Tribe in the Indian
13 Country of the old Klamath River Indian Reservation/Extension pursuant to 28 U.S.C. § 1360, and
14 18 U.S.C. § 1162 ("P.L. 280"); (2) Whether the Sheriff and the Department have civil regulatory
15 authority over the Tribe's regulation of fishing by its members within the Indian Country of the old
16 Klamath River Indian Reservation/Extension under P.L. 280; and (3) Whether the Sheriff and the
17 Department have deprived the Individual Plaintiffs and the members of the Tribe of their federally
18 reserved right to fish in the Klamath River at the Tribe's usual and customary fishing places within
19 the old Klamath River Reservation/ Extension, free of State regulation and control, in violation of
20 42 U.S.C. § 1983 and the 14th Amendment to the United States Constitution.

21 4. **Motions:** Defendant has filed a motion to dismiss. The hearing date for the motion
22 has been vacated pursuant to the order of this Court to allow the parties to pursue settlement. No
23 other motions are pending.

24 5. **Amendment of Pleadings:** Plaintiffs intend to file a second amended complaint to
25 add officials of the California Department of Fish & Game as defendants and to add allegations
26 about the relationship between the actions of defendant and the actions of California Department
27 of Fish & Game officials.

28 6. **Evidence Preservation:** Neither party has any concerns about evidence

1 preservation, as the issues in this case are legal issues based on facts that are not in dispute.

2 7. **Disclosures:** No Rule 26 disclosures have been made in response to the Amended
3 Complaint because the parties are pursuing settlement of the case.

4 8. **Discovery:** No discovery has been carried out in this case. The parties have not yet
5 engaged in discovery or developed a discovery plan pursuant to Rule 26(f) because the parties have
6 been putting all of their efforts into settling the case.

7 9. **Class Action:** This is not a class action.

8 10. **Related Cases:** There are no related cases.

9 11. **Relief:** Plaintiff seeks the following relief. (1) A declaration that defendant Wilson
10 and the peace officers deputized by the Del Norte County Sheriff's Department ("Department") and
11 exercising the State of California peace officer powers delegated to them by defendant Wilson have
12 no jurisdiction to enforce the provisions of the California Fish and Game Code against members
13 of the Tribe within the boundaries of the old Klamath River Reservation/Extension; (2) A
14 declaration that, under P.L. 280, defendant Wilson and officers deputized by the Department,
15 exercising the State of California peace officer powers delegated to them by defendant Wilson, lack
16 civil regulatory authority over the Tribe's regulation of fishing by its members on the Klamath
17 River within the old Klamath River Reservation/Extension; (3) A declaration that defendant
18 Wilson and the Department, under color of State law (the provisions of the California Fish and
19 Game Code) have deprived plaintiffs Frank Dowd and Gary Dowd and the members of the Tribe
20 of the right to fish in the Klamath River within the old Klamath River Reservation/Extension free
21 of state regulation and control, a right guaranteed to them by federal law, in violation of 42 U.S.C.
22 § 1983; (4) An order preliminarily and permanently enjoining defendant Wilson, his agents and
23 employees, and law enforcement officers exercising State of California peace officer powers
24 delegated to them by defendant Wilson from citing members of the Tribe for fishing on the
25 Klamath River within the old Klamath River Reservation/Extension not in accordance with State
26 law; and (5) Award the plaintiffs their costs and reasonable attorneys' fees pursuant to 42 U.S.C.
27 § 1988.

28 12. **Settlement and ADR:** The parties have not discuss utilizing the ADR process

1 because the attorneys for the parties have reached agreement on a tentative settlement of the case.

2 13. **Consent to Magistrate Judge for All Purposes:** This matter has already been
3 assigned to Judge Chen.

4 14. **Other References:** The parties have not discussed the suitability of the case for
5 reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation
6 because the parties have been pursuing settlement of the case.

7 15. **Narrowing of Issues:** The parties have not discussed the likelihood of narrowing
8 the issues in this case because they have been pursuing settlement of the case. However, the parties
9 agree that the issues in this case are limited, legal issues, and that all but one fact about the
10 deputation of an officer is undisputed.

11 16. **Expedited Trial Procedure:** The parties agree that, because, the issues in this case
12 are limited, legal issues, summary proceedings will be appropriate in this case.

13 17. **Scheduling:** The parties have not discussed scheduling because they are pursuing
14 settlement, except to determine how much additional time they need to concluded settlement
15 negotiations.

16 18. **Trial:** The parties have not discussed the issues relating to trial because they are
17 pursuing settlement of the case, but the parties expect the case to be determined based on a motion
18 to dismiss or cross motions for summary judgment.

19 19. **Disclosure of Non-party Interested Entities or Persons:** The parties have not
20 discussed submission of disclosures of non-party interested entities or persons because they are
21 pursuing settlement of the case.

22 20. **Other Matters:** The parties request that the Case Management Conference in this
23 matter, presently scheduled for March 7, 2013, be rescheduled to 60 days from the date of the filing
24 of this joint case management statement to allow the parties the opportunity to conclude settlement
25 negotiations.

1 Dated: February 28, 2013

Respectfully Submitted,

2 RAPPORT AND MARSTON

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4 By: /s/ Lester J. Marston
LESTER J. MARSTON
Attorneys for Plaintiffs

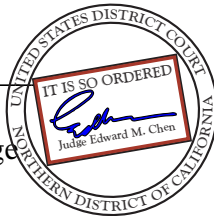
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6
7 Dated: February 28, 2013

DEL NORTE COUNTY COUNSEL

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9 By: /s/ Gretchen Stuhr
GRETCHEN STUHR
Attorney for Defendant

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11 IT IS SO ORDERED THAT the CMC is reset from 3/7/13 to 5/30/13 at 9:00 a.m. A joint
cmc statement shall be filed by 5/23/13.

12
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14 Edward M. Chen
U.S. District Judge



CERTIFICATE OF SERVICE

I, LESTER J. MARSTON, hereby certify that a copy of the foregoing document was this date served upon all counsel of record by electronically filing the foregoing with the Clerk of the U.S. District for the Northern District of California, using its ECF system, which automatically provides electronic notification to the following:

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